

Section 9K: Ontario Labour Legislation

- 9K.1 (1996-12-02) On November 5, 1992, Ontario Bill 40 received royal assent. Included in the legislation were certain amendments to the *Employment Standards Act* intended to protect the jobs and the level of benefits of workers who work primarily at one specific site to provide building cleaning, food and security services.

Although the federal government is not bound by provincial legislation, contractors bidding on federal government work are subject to the Act and amendments thereto. The Crown, as building owner, has an information handling role under this legislation.

Treasury Board Contracting Policy requires departmental contracting authorities to observe the intent of the Ontario Labour Legislation, and, in practice, to follow its provisions.

- 9K.2 (2002-12-13) In November 1995, Ontario Bill 7 received royal assent. It amended Ontario Bill 40 by repealing Part XIII.2, "Successor Employers", of the *Employment Standards Act* (ESA) and adding section 13.1 "Successor Employers". The Ontario Regulation (138/96) sets out successor employer exemptions from compliance with Part XIV of the ESA (termination and severance provisions) and the type of information that building owners or managers may obtain from incumbent contractors and provide to prospective bidders or successor employers. The *Employment Standards Act*, R.S.O. 1990, c. E14, was repealed and replaced by the *Employment Standards Act, 2000* (ESA 2000) and the Ontario Regulation 138/96 has been superseded by Ontario Regulation 287/01. ESA 2000 came into force on September 4, 2001, and governs employment standards entitlements arising out on or after that date.

- 9K.3 (2002-12-13) ESA 2000 Section 77(1) applies to contracts for building cleaning, food and security services which are provided at a specific premises directly or indirectly by or to a building owner manager in the province of Ontario, and which commenced on or after 31 October 1995. Not included are construction, maintenance, such as snow removal, lawn care, window cleaning, and the production of goods, other than goods related to the provision of food services at the premises for consumption on the premises.

Expiry of Existing Contract

- 9K.4 (2002-12-13) Contracting authorities must obtain from the outgoing contractor the following information as set out in Ontario Regulation 287/01 for each employee providing services at the premises, preferably four (4) months prior to the completion date of the existing contract:

- (a) the name, address, and telephone number;
- (b) the classification, wage rate, benefits, average weekly hours and initial hire date (including employment with previous employers under Bill 40);
- (c) the number of weeks worked in the preceding 26 weeks (or a longer period if services were temporarily discontinued or an employee was on pregnancy or parental leave);
- (d) a statement indicating whether the employees were not primarily employed at the premises during the preceding 13 weeks or during an employee's most recent 13 weeks of active employment.

The contracting authority may also request a copy of any applicable union agreement.

- 9K.5 (2002-12-13) That information should be obtained by filling out form PWGSC-TPSGC 5116, Information on Incumbent Employees. Copies of the form could be attached to the letter proposed for obtaining information from the existing contractor. Where contracts contain a provision for obtaining information, a suggested letter is provided for this purpose at [Exhibit A](#). If

contracts do not contain a provision for obtaining this information, the suggested letter at [Exhibit B](#) should be used.

Bid Solicitation

- 9K.7 (2000-05-12) Except for information on the name, address and telephone number of each employee, information received from the outgoing contractor should be conveyed in the bid solicitation document to potential bidders. The solicitation clause [K9015T](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual shall be included in applicable documents. It informs bidders of the requirements of Bill 7 and the purpose to which information required under Bill 7 should be used.

Contract Award

- 9K.8 (1994-12-16) Names, addresses and telephone numbers of an outgoing contractor's employees shall be given to the new contractor only.
- 9K.9 (2002-02-12) Contracting authorities should ensure that contract terms include special conditions which require the contractor to keep its employees' records up to date and, upon request, submit them to the contracting authority. Contract clause [K9015C](#) of the SACC Manual informs the contractor of its obligations to keep employee information up to date and to make it available upon request by the Crown.
- 9K.11 (2004-12-10) It is important to remember that there is no onus on the Department to mediate between the outgoing and incoming contractors in the event that the information provided is incomplete or erroneous. If there are any difficulties, enquiries should be referred to the local [Ontario Ministry of Labour offices](#) for resolution.
- 9K.12 (1994-12-16) Performance problems require prompt follow up action and reporting, preferably in writing, to the contractor. Written reports should identify the location, date, situation or circumstances surrounding the performance difficulties. The contractor is responsible for remedying the situation or improving the performance as required.

Exhibit A - Proposed letter when requesting information from an outgoing contractor where there IS a clause in the contract to that effect.
(2002-12-13)

Dear _____ (*Name of Contractor*),

As you are aware, contract _____ (*Serial No.*) for the provision of _____ (*Type of building-related services*) will expire on _____ (*Date*).

Pursuant to the clause included in the above-noted contract, you are hereby required to provide, within seven (7) days of the date of this letter, the following information with respect to your current employees at these premises and providing the services performed under this contract:

- (a) each employee's name, residential address and telephone number;
- (b) his or her job classification or job description;
- (c) the wage rate actually paid to the employee;
- (d) a description of the benefits, if any, provided to the employee including the cost of each benefit and the benefit period to which the cost relates;
- (e) the number of hours that the employee works in a regular non-overtime work week; or if hours vary from week to week, the number of the employee's non-overtime hours for each week that the employee worked during the 13 weeks preceding the date of the request for information;
- (f) the date on which the employer hired the employee;
- (g) any period of employment attributed to the employer under Section 10 of the Act;
- (h) the number of weeks that the employee worked at the premises during the 26 weeks preceding the date on which the request was made for the information (the 26 week period shall be calculated without including any period during which the provision of services at the premises was temporarily discontinued, or during which the employee was on a leave under Part XIV of the Act);
- (i) a statement indicating whether the employee
 - 1. is actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the date on which the request was made for the information;
 - 2. is employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during his or her most recent 13 weeks of active employment.

In addition to the above information, you are required to provide an up-to-date copy of the collective agreement regarding the employees at the premises, or, if no collective agreement exists for these premises, a copy of the union certificate regarding these employees or, if no union certificate was issued, a copy of any pending union application, if it exists.

Between the date you provide the above information and the completion date of this contract, you shall also provide the Contracting Authority with updated information immediately as any changes to said information occur.

All information shall be provided on the prescribed form of which copies are attached herewith. With the exception of (a), this information will be provided to prospective bidders for a future contract for these services relating to the premises. The name, address and telephone number of each employee shall only be given to the successful bidder.

Signed by: _____
Contracting Authority

**Exhibit B - Proposed letter when requesting information from an outgoing contractor where there is NO clause in the contract to that effect
(2002-12-13)**

Dear _____ (Name of Contractor),

As you are aware, contract _____ (Serial No.) for the provision of _____ (Type of building-related services) will expire on _____ (Date).

Pursuant to the laws of the province of Ontario, you are hereby requested to provide the following information with respect to your current employees at these premises and providing the services performed under this contract:

- (a) each employee's name, residential address and telephone number;
- (b) his or her job classification or job description;
- (c) the wage rate actually paid to the employee;
- (d) a description of the benefits, if any, provided to the employee including the cost of each benefit and the benefit period to which the cost relates;
- (e) the number of hours that the employee works in a regular non-overtime work week, or if hours vary from week to week, the number of the employee's non-overtime hours for each week that the employee worked during the 13 weeks preceding the date of the request for information;
- (f) the date on which the employer hired the employee;
- (g) any period of employment attributed to the employer under Section 10 of the Act;
- (h) the number of weeks that the employee worked at the premises during the 26 weeks preceding the date on which the request was made for the information (the 26 week period shall be calculated without including any period during which the provision of services at the premises was temporarily discontinued, or during which the employee was on a leave under Part XIV of the Act);
- (i) a statement indicating whether the employee
 - 1. is actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the date on which the request was made for the information;
 - 2. is employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during his or her most recent 13 weeks of active employment.

In addition to the above information, you are required to provide an up-to-date copy of the collective agreement regarding the employees at the premises, or, if no collective agreement exists for these premises, a copy of the union certificate regarding these employees or, if no union certificate was issued, a copy of any pending union application, if it exists.

With the exception of (a), this information will be provided to prospective bidders for a future contract for these services relating to the premises. The name, address and telephone number of each employee shall only be given to the successful bidder.

Your reply is requested no later than _____ (*Date*).

Signed by: _____
Contracting Authority